

UNITED STATES OF AMERICA
Before The
OFFICE OF THRIFT SUPERVISION

In the Matter of)

Monticello Bank)
Jacksonville, Florida)

OTS Docket No.: 08300)

Order No.: ATL-2006-04

Date: January 19, 2006

**STIPULATION AND CONSENT TO THE ISSUANCE OF AN
ORDER TO CEASE AND DESIST FOR AFFIRMATIVE RELIEF**

WHEREAS, the Office of Thrift Supervision (OTS), based upon information derived from the exercise of its regulatory responsibilities, is of the opinion that grounds exist to initiate an administrative cease and desist proceeding for affirmative relief against Monticello Bank, Jacksonville, Florida, OTS Docket No. 08300 (Monticello or Bank), pursuant to Section 8(b) of the Federal Deposit Insurance Act (FDIA), 12 U.S.C. § 1818(b),¹ and

WHEREAS, Monticello desires to cooperate with the OTS and to avoid the time and expense of such administrative proceeding, and

WHEREAS, Monticello enters into this Stipulation and Consent to the Issuance of an Order to Cease and Desist for Affirmative Relief (Stipulation) (i) without any adjudication on the merits, (ii) without admitting or denying that grounds exist to initiate an administrative cease and desist proceeding, (iii) without admitting or denying the Findings of Fact, except as to Jurisdiction (Paragraph 1 below), which jurisdiction is admitted, and (iv) solely for the purpose

¹ All references to the United States Code (U.S.C.) are as amended, unless otherwise indicated.

of settling this matter in accordance with Rule 408 of the Federal Rules of Evidence and equivalent state provisions.

NOW, THEREFORE, on these premises, Monticello hereby stipulates and agrees as follows:

1. Jurisdiction.

- a. Monticello is a "savings association" within the meaning of Section 3(b) of the FDIA, 12 U.S.C. § 1813(b), and Section 2(4) of the Home Owners' Loan Act (HOLA), 12 U.S.C. § 1462(4). Accordingly, Monticello is an "insured depository institution" as that term is defined in Section 3(c) of the FDIA, 12 U.S.C. § 1813(c).
- b. Pursuant to Section 3(q) of the FDIA, 12 U.S.C. § 1813(q), the Director of the OTS is the "appropriate Federal banking agency" with jurisdiction to maintain an administrative cease and desist proceeding against such a savings association. Therefore, the Bank is subject to the jurisdiction of the OTS to initiate and maintain a cease and desist proceeding against it pursuant to Section 8(b) of the FDIA, 12 U.S.C. § 1818(b). The Director of the OTS has delegated to the Regional Director of the Southeast Region of the OTS or his/her designee (Regional Director) the authority to issue cease and desist orders where the savings association has consented to the issuance of the orders.

2. OTS Findings of Fact.

- a. The OTS finds that the Bank has engaged in certain unsafe and unsound practices and violated various laws and regulations to which the Bank is subject, as outlined in detail in the OTS's October 28, 2004 Report of Examination of Monticello

(2004 Examination) and July 11, 2005 Report of Examination of Monticello (2005 Examination). Such violations include, but are not limited to, violations of the interagency real estate lending standards (12 C.F.R. § 560.101); limitations on loans made to one borrower (12 C.F.R. § 560.93); the appraisal standards and requirements (12 C.F.R. Part 564); and the requirements applicable to transactions with affiliates (12 C.F.R. § 563.43 and 12 C.F.R. Part 223).

- b. In addition to the foregoing regulatory violations, the Bank has engaged in certain unsafe and unsound real estate lending practices related to the oversight and administration of its construction loan portfolio (including speculative and construction permanent loans). Specifically, the Bank has failed to establish adequate diversification limits, builder/contractor construction loan limits, and builder/contractor construction completion requirements. The Bank has not adequately monitored the construction loan portfolio to assess builder and contractor construction progress in compliance with construction loan terms. As a result, the Bank has a number of construction loans that involve builders and contractors who have failed to start and/or complete construction within the terms of the construction loans. Many of these loans are maturing with little or no construction of the underlying houses being completed and, in some cases, borrowers who cannot re-qualify due to changes in financial condition occurring over the construction loan period.
- c. The Bank has failed to maintain adequate policies and procedures to ensure the Bank's compliance with applicable laws and regulations and agency guidance in light of significant growth, particularly in higher risk assets. The Bank has not

appropriately assessed and monitored the increased exposure resulting from greater concentrations of higher risk assets.

3. Consent.

Monticello consents to the issuance by the OTS of the accompanying Consent Order to Cease and Desist for Affirmative Relief (C&D Order). The Bank further agrees to comply with the terms of the C&D Order upon issuance and stipulates that the C&D Order complies with all requirements of law.

4. Finality.

The C&D Order is issued under the provisions of Section 8(b) of the FDIA, 12 U.S.C. §§ 1818(b). Upon its issuance by the Regional Director, it shall be a final order, effective and fully enforceable by the OTS under the provisions of Section 8(i) of the FDIA, 12 U.S.C. § 1818(i).

5. Waivers.

Monticello waives the following:

- a. the right to be served with any written notice of the OTS's charges against it as provided by Section 8(b) of the FDIA, 12 U.S.C. § 1818(b);
- b. the right to an administrative hearing of the OTS's charges against it as provided by Section 8(b) of the FDIA, 12 U.S.C. § 1818(b);
- c. the right to seek judicial review of the C&D Order including, without limitation, any such right provided by Sections 8(h) or (i) of the FDIA, 12 U.S.C. §§ 1818(h) and (i), or otherwise to challenge the validity of the C&D Order;
- d. any and all claims against the OTS, including its employees and agents, and any other governmental entity for the award of fees, costs, or expenses related to this

- OTS enforcement matter and/or the C&D Order, whether arising under common law, the Equal Access to Justice Act, 5 U.S.C. § 504, or 28 U.S.C. § 2412; and
- e. the right to assert this proceeding, its consent to issuance of the C&D Order, and/or the issuance of the C&D Order, as the basis for a claim of double jeopardy in any pending or future proceeding brought by the United States Department of Justice or any other governmental entity.

6. Other Governmental Actions Not Affected.

Monticello acknowledges and agrees that its consent to the issuance of the accompanying C&D Order is solely for the purpose of resolving certain potential OTS administrative enforcement charges as provided above, and does not otherwise release, discharge, compromise, settle, dismiss, resolve, or in any way affect any actions, charges against, liability, or other administrative, civil, or criminal proceeding that arise pursuant to this action or otherwise, and that may be or have been brought by another governmental entity.

7. Reservation of Rights.

Monticello acknowledges that the OTS reserves the right to bring such additional action(s), charge(s), or proceeding(s) arising from or related in any way to the Findings of Fact or any other matter, as the OTS deems appropriate, in its sole discretion.

8. Agreement for Continuing Cooperation.

Monticello agrees that, on reasonable notice and without service of a subpoena, it will promptly respond to any written request from the OTS for documents that the OTS reasonably requests to demonstrate compliance with the C&D Order. Monticello agrees to cooperate with the OTS or any other federal agency in any review requested by the OTS or any other federal government agency, or in any investigation, litigation, or other proceeding relating to Monticello,

its holding company, subsidiaries, service corporations, or institution-affiliated parties.

9. Miscellaneous.

- a. The construction and validity of this Stipulation and the C&D Order shall be governed by the laws of the United States of America.
- b. If any provision of this Stipulation and the C&D Order is ruled to be invalid, illegal, or unenforceable by the decision of any Court of competent jurisdiction, the validity, legality, and enforceability of the remaining provisions hereof shall not in any way be affected or impaired thereby, unless the Regional Director in his or her sole discretion determines otherwise.
- c. All references to the OTS in this Stipulation and the C&D Order shall also mean any of the OTS's predecessors, successors, and assigns.
- d. The section and paragraph headings in this Stipulation and the C&D Order are for convenience only, and such headings shall not affect the interpretation of this Stipulation or the C&D Order.
- e. The terms of this Stipulation and the C&D Order represent the final agreement of the parties with respect to the subject matters hereof and constitute the sole agreement of the parties with respect to such subject matters.
- f. This Stipulation and the C&D Order shall remain in effect until terminated, modified, or suspended in writing by the OTS, acting through its Director, Deputy Director, Regional Director, or other authorized representative.

10. Signature of Directors.

Each Director signing this Stipulation attests that he/she voted in favor of a resolution authorizing the execution of the Stipulation.

WHEREFORE, Monticello, by a majority of its directors, executes this Stipulation and Consent to the Issuance of an Order to Cease and Desist for Affirmative Relief intending to be legally bound hereby.

MONTICELLO BANK

Jacksonville, Florida

Accepted by a majority of its directors:

OFFICE OF THRIFT SUPERVISION

By /S/
Director

/S/
John E. Ryan
Regional Director

/S/
Director

Dated: 1/17/06

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In the Matter of)

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Order No.: **ATL-2006-04**

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CONSENT ORDER TO CEASE AND DESIST FOR AFFIRMATIVE RELIEF

WHEREAS, Monticello Bank, Jacksonville, Florida, OTS Docket No. 08300 (Monticello or Bank), by and through its Board of Directors (Board), has executed a Stipulation and Consent to the Issuance of an Order to Cease and Desist for Affirmative Relief (Stipulation); and

WHEREAS, Monticello, by executing the Stipulation, has consented and agreed to the issuance of this Consent Order to Cease and Desist for Affirmative Relief (C&D Order) by the Office of Thrift Supervision (OTS), pursuant to Section 8(b) of the Federal Deposit Insurance Act (FDIA), 12 U.S.C. § 1818(b)¹; and

WHEREAS, the Director of the OTS has delegated to the Regional Directors of the OTS the authority to issue consent orders on behalf of the OTS pursuant to provisions of Section 8 of the FDIA, 12 U.S.C. § 1818.

NOW, THEREFORE, IT IS ORDERED THAT:

¹ All references to the United States Code (U.S.C.) are as amended.

Order to Cease and Desist

1. The Bank and its directors, officers, employees, and agents shall cease and desist from any action (alone or with another or others) for or toward causing, bringing about, participating in, counseling or the aiding and abetting of any violation of:

- a. the OTS regulations regarding real estate lending standards set forth in 12 C.F.R. § 560.101;
- b. the OTS regulation regarding loans to one borrower (LTOB) set forth in 12 C.F.R. § 560.93;
- c. the OTS regulations regarding appraisals set forth in 12 C.F.R. Part 564; and
- d. the regulations governing transactions with affiliates set forth in 12 C.F.R. Part 223 (Regulation W) and 12 C.F.R. § 563.41.

Loan Policies, Procedures, and Administration

2. Within sixty (60) days after the Effective Date of this C&D Order, the Board shall modify its Loan Policies, including its Construction Lending Policies, to include a loan concentration and asset diversification policy that complies with 12 C.F.R. § 560.101 (Diversification Policy). The Diversification Policy shall, at a minimum:

- a. identify the Bank's geographic lending area consistent with the Bank's Business Plan;
- b. establish specific aggregate and individual investment limits for loans, expressed as a percentage of the Bank's assets and capital, by (i) loan type (including, but not limited to, custom residential construction, speculative residential construction, speculative commercial construction, commercial real estate, and loans collateralized by assignments of mortgages); (ii) geographic market; (iii) borrower, including all persons and entities with loans that would be required to

be combined under the loans to one borrower regulations set forth in 12 C.F.R. § 560.93, (iv) subdivision or development; and (vi) individual borrower for each subdivision or development,

- c. identify appropriate and acceptable terms and conditions for loans by type (including the establishment of construction progress and completion requirements for builders) and geographic market; and
- d. provide for quarterly reports to the Board regarding the Bank's compliance with its Diversification Policy, including detailed information on loan relationships or concentrations of credit where the Bank's total exposure to any one borrower, contractor, builder, or project exceeds 5% of the Bank's unimpaired capital and surplus, and aging reports for all construction loans listed by builder or contractor.

3. Within sixty (60) days after the Effective Date of this C&D Order, the Board shall review and revise the Bank's loan administration practices and procedures to ensure that all modifications or extensions of existing loans are in writing, consistent with the terms of the loan agreement and applicable law, acceptable and equitable to the Bank, and reviewed and executed by the borrower and appropriate Bank personnel.

4. Within sixty (60) days after the Effective Date of this C&D Order, the Board shall adopt a written plan to reduce the Bank's total exposure to JPG Enterprises, Inc., D/B/A Majestic Homes to no more than 15% of the Bank's unimpaired capital and surplus (Majestic Plan). The Majestic Plan shall specify the manner and method for reducing the Bank's level of exposure, including the establishment of a timetable and target amounts. The Board shall submit a copy of the Majestic Plan to the Regional Director within ten (10) days after its adoption. The Board shall make such changes to the Majestic Plan as required by the Regional Director within thirty (30) days after the date of notification by the Regional Director. Management shall provide the Board with quarterly reports on the Bank's progress in complying with the Majestic Plan. The Board shall provide copies of the quarterly progress reports and the Board meeting minutes to the Regional Director within ten (10) days after review.

Business Plan

5. Within sixty (60) days after the Effective Date of this C&D Order, the Board shall adopt and submit to the Regional Director for review and written approval, a three (3) year business plan (Business Plan) for the calendar years 2006, 2007 and 2008. The Business Plan shall, at a minimum:

- a. discuss the Bank's existing operations, asset structure, current market conditions, local demographics, available resources, and existing capital levels;
- b. consider the corrective actions taken by the Board to addresses the concerns noted in the 2004 and 2005 Examinations;
- c. fully and adequately support all cost of funds and interest rate assumptions and projections;
- d. consider the requirements and corrective actions imposed by this C&D Order, including aggregate and individual limitations established by the Board for each type of loan or investment;
- e. contain balance sheet and income projections for the period covered by the Business Plan, including the basis for interest rate assumptions; and
- f. identify and discuss the Bank's future operations and business strategies, including the continuation of and/or projected increases in current activities and operations, as well as any new activities and operations.

The Board shall make such changes to the Business Plan as required by the Regional Director within thirty (30) days after the date of notification by the Regional Director.

6. The Board shall ensure that the Bank adheres to the Business Plan approved by the OTS. The Board shall require Management to prepare quarterly variance reports detailing the Bank's compliance with the Business Plan (Variance Report). The Variance Report shall be

provided to the Board within thirty (30) days after the close of each calendar quarter. The Variance Report shall detail actual operating results versus projected results, including compliance with Board established limitations on loans and investments. The Variance Report shall fully discuss any material deviations from the Business Plan and include a detailed description of the measures that have been implemented, proposed or are under current consideration to correct any such deviation. The Board shall fully document its review of the Variance Reports in the appropriate Board meeting minutes. The Board shall notify the OTS of any material deviation from the Business Plan within thirty (30) days after the occurrence of the deviation. Such notice shall include any corrective action taken or to be taken by the Board or Management to address such deviation. A deviation shall be considered material under this paragraph when:

- a. Monticello engages in any type or level of activity that is inconsistent with the Business Plan; or
- b. Monticello exceeds the level of any activity contemplated in the Business Plan or fails to meet target amounts established in the Business Plan by more than 10%, unless the activity involves single family permanent loans (that are not construction-permanent loans), in which case a variance of more than 25% shall be deemed to be a material deviation.

Allowance for Loan and Lease Losses

7. The Board shall conduct a quarterly review of the sufficiency of the Bank's Allowance for Loan and Lease Losses (ALLL) in accordance with OTS regulatory guidance, including 12 C.F.R. § 560.160(b), Section 261 of the Thrift Activities Handbook (TAH), and the December 21, 1993 Interagency Policy Statement on ALLL. Any deficiency in the ALLL shall be cured in the quarter in which it is discovered, before the Bank files its Thrift Financial Report (TFR) with the OTS. The Board shall document the factors considered and conclusions reached by the Board in determining the adequacy of the ALLL in the appropriate Board meeting minutes. In assessing, establishing and maintaining adequate ALLL, the Board shall, at a minimum, consider the following:

- a. the results of all internal loan reviews and classifications;
- b. the loan loss experiences and history of the Bank;
- c. an estimate of the potential loss exposure on each significant credit;
- d. concentrations of credit; and
- e. current and prospective markets and economic conditions.

Transactions with Affiliates

8. Within sixty (60) days after the Effective Date of this C&D Order, the Board shall review and, as necessary, amend the Bank's policies and procedures governing transactions with Affiliates, as defined in 12 C.F.R. § 563.43, to strengthen and ensure the Bank's compliance with the requirements of Regulation W and 12 C.F.R. § 563.43 (TWA Policy). The amended TWA Policy shall specifically require prior Board review and approval of all transactions with Affiliates. The Board shall ensure that all transactions with affiliates comply with the requirements of Regulation W and the Bank's TWA Policy. The Board shall take all steps necessary to ensure that the TWA Policy required by this Paragraph 8 is implemented and thereafter fully adhered to by Management and staff of Monticello. The Board shall submit a copy of the TWA Policy required by this Paragraph 8 to the Regional Director within ten (10) days after review and amendment by the Board.

Loans to One Borrower

9. Within thirty (30) days after the Effective Date of this C&D Order, the Board shall revise or develop, adopt and implement such policies and procedures as necessary to ensure that the Bank complies with the LTOB limitations set forth in 12 C.F.R. § 560.93 (LTOB Policy). The LTOB Policy must require documentation to be maintained in each loan file sufficient to demonstrate full compliance with all requirements of 12 C.F.R. § 560.93, including certifications from all borrowers to whom loans are made in an amount more than the greater of \$500,000 or 5% of the Bank's capital and surplus, identifying any and all related persons, entities

and interests of the borrower. The Board shall establish an aggregate limit per borrower or borrowing relationship amount above which full Board approval must be obtained and documented. The Board will require Management to prepare and provide a monthly report to the Board identifying the Bank's largest borrowers and borrowing relationships and such other information as the Board deems appropriate, including a certification from Management that the loans reported to the Board comply with the Bank's LTOB limits. The Board's review and any corrective actions required shall be fully documented in the Board meeting minutes and a copy of Management's report included as an attachment. The Board shall submit a copy of the LTOB Policy required by this Paragraph 9 to the Regional Director for approval within thirty (30) days after their adoption by the Board.

Appraisals

10. Within sixty (60) days after the Effective Date of this C&D Order, the Board shall review its existing appraisal policies and procedures (Appraisal Policy) and revise, adopt and implement changes to the Appraisal Policy to strengthen and ensure the Bank's compliance with the provisions and requirements of 12 C.F.R. Part 564 and TAH Section 208.

Board of Directors

11. Within sixty (60) days after the Effective Date of this C&D Order, the Board will ensure that the Bank takes such action as is necessary to resolve the disparity between the number of directors currently serving on the Board and the number authorized by the Bank's charter and bylaws.

12. Effective immediately, the Board shall require Management to prepare and provide the Board with such reports, documents, and other information as is necessary and appropriate for the Board to exercise its fiduciary oversight duties and responsibilities and consider and assess the Bank's operations and the risks associated with any new activities or significant increases in the level of existing activities.

Board Compliance Committee

13. Within thirty (30) days after the Effective Date of this C&D Order, the Board shall appoint a committee comprising three (3) or more Directors, the majority of whom shall be independent of Management, to monitor and coordinate the Bank's compliance with the provisions of this C&D Order and the completion of all corrective action required in the 2004 and 2005 Examinations (the Regulatory Compliance Committee).

14. Within thirty (30) days after the end of each calendar quarter, the Regulatory Compliance Committee shall submit a written progress report to the Board detailing the actions taken to comply with each provision of this C&D Order and the actions required by the 2004 and 2005 Examinations, as well as the results of those actions.

15. Within forty-five (45) days after the end of each calendar quarter, the Board shall submit to the Regional Director: (i) a copy of the Regulatory Compliance Committee's quarterly progress report required by Paragraph 14 above, with any additional comments made by the Board; and (ii) a written certification that each Director has reviewed the report.

Compliance with Order

16. All policies, procedures, corrective actions, plans, programs, reviews and systems required by this C&D Order (collectively, Policies and Procedures) shall conform to all applicable statutes, regulations, OTS policy and guidance. The Board shall submit copies of all Policies and Procedures required by this C&D Order to the Regional Director within the timeframes specified or, in the event a timeframe is not specified, within thirty (30) days after adoption by the Board. The Board shall revise such Policies and Procedures as required by the Regional Director within thirty (30) days of receipt of written direction from the Regional Director. The Policies and Procedures, as modified consistent with the written direction of the Regional Director, shall be incorporated into this C&D Order and any deviation from such Policies and Procedures shall be a violation of this C&D Order.

Definitions

17. All technical words or terms used in this C&D Order for which meanings are not specified or otherwise provided by the provisions of this C&D Order shall, insofar as applicable, have meanings as defined in Chapter V of Title 12 of the Code of Federal Regulations, the HOLA, the FDIA, OTS Memoranda or other published OTS guidance. Any such technical words or terms used in this C&D Order and undefined in said Code of Federal Regulations, the HOLA, the FDIA, OTS Memoranda, or other published regulatory guidance shall have meanings that are in accordance with the best custom and usage in the savings and loan industry.

Successor Statutes, Regulations, Guidance, Amendments

18. Reference in this C&D Order to provisions of statutes, regulations, OTS Memoranda, and other published regulatory guidance shall be deemed to include references to all amendments to such provisions as have been made as of the Effective Date and references to successor provisions as they become applicable.

No Violations Authorized; OTS Not Restricted

19. Nothing in this C&D Order or the Stipulation shall be construed as: (i) allowing the Bank to violate any law, rule, regulation, or policy statement to which it is subject; or (ii) restricting or estopping the OTS from taking any action(s) that it believes are appropriate in fulfilling the responsibilities placed upon it by law including, without limitation, any type of supervisory, enforcement or other action that the OTS determines to be appropriate, arising out of matters described in the most recent Report of Examination, or based on other matters.

Time Limits; Effect of Headings; Separability Clause; Stipulation Incorporated

20. Time limitations for compliance with the terms of this C&D Order run from the Effective Date, unless otherwise noted.

21. The section and paragraph headings herein are for convenience only and shall not affect the construction hereof.

22. In case any provision in this C&D Order is ruled to be invalid, illegal or unenforceable by the decision of any court of competent jurisdiction, the validity, legality and enforceability of the remaining provisions hereof shall not in any way be affected or impaired thereby, unless the Regional Director in his/her sole discretion determines otherwise.

23. The Stipulation is made a part hereof and is incorporated herein by this reference.

Effective Date; Duration

24. This C&D Order is and shall become effective on the date it is issued, i.e., the Effective Date as shown on the first page hereof. This C&D Order (including the related Stipulation) shall remain in effect until terminated, modified or suspended, in writing by the OTS, acting through its Director, Regional Director or other authorized representative.

OFFICE OF THRIFT SUPERVISION

By: _____ /S/
John E. Ryan
Regional Director